

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

<b>LORETTA DENISE NOBLE, GDC ID # 1199770, Plaintiff,</b>	<b>:</b>	<b>PRISONER CIVIL RIGHTS 42 U.S.C. § 1983</b>
	<b>:</b>	
<b>v.</b>	<b>:</b>	
	<b>:</b>	
<b>KATHY SEABOLT, Warden, Defendant.</b>	<b>:</b>	<b>CIVIL ACTION NO. 1:11-CV-4227-WSD-AJB</b>

**UNITED STATES MAGISTRATE JUDGE'S  
FINAL REPORT AND RECOMMENDATION**

Plaintiff, Loretta Denise Noble, a former inmate, has filed an amended *pro se* civil rights complaint, [Doc. 13], in response to the Court's Order, [Doc. 12], which permitted Plaintiff to amend her retaliatory transfer claim against Arrendale State Prison Warden Kathy Seabolt. The amended complaint is now before the Court for screening under 28 U.S.C. § 1915A.

**I. 28 U.S.C. § 1915A Standard**

The Court must screen a prisoner complaint against a governmental entity, officer, or employee and dismiss the complaint or any portion thereof if it (1) "is frivolous, malicious, or fails to state a claim upon which relief may be granted" or (2) "seeks monetary relief from a defendant who is immune from such relief." 28 U.S.C. § 1915A(a), (b)(1) & (2). A claim is frivolous when it "lacks an arguable

basis either in law or in fact.” *Miller v. Donald*, 541 F.3d 1091, 1100 (11<sup>th</sup> Cir. 2008) (quoting *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)) (internal quotation marks omitted). A complaint fails to state a claim when the factual allegations, accepted as true, do not “raise a right to relief above the speculative level . . . .” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555-56 (2007). A viable claim must be “plausible on its face.” *Id.* at 570.

In order to satisfy the plausibility standard, the plaintiff must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Twombly*, 550 U.S. at 556). The Court construes the factual allegations favorably to a *pro se* plaintiff and holds *pro se* pleadings to “less stringent standards than formal pleadings drafted by lawyers . . . .” *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

“To state a claim under 42 U.S.C. § 1983, a plaintiff must allege that (1) the defendant deprived him of a right secured under the United States Constitution or federal law and (2) such deprivation occurred under color of state law.” *Richardson v. Johnson*, 598 F.3d 734, 737 (11<sup>th</sup> Cir. 2010) (citing *U.S. Steel, LLC v. Tieco, Inc.*,

261 F.3d 1275, 1288 (11<sup>th</sup> Cir. 2001), and *Arrington v. Cobb Cnty.*, 139 F.3d 865, 872 (11<sup>th</sup> Cir. 1998)).

## **II. Discussion**

Plaintiff alleges that she was transferred from Arrendale State Prison to Pulaski State Prison because she exercised her First Amendment right to submit a grievance. [Doc. 13 at 1.] On May 16, 2011, Plaintiff submitted an informal grievance “based on discrimination.” [Id. at 3.] Upon the denial of that grievance on May 19, 2011, Plaintiff submitted a formal grievance to “Ms. Jones.” [Id.] Plaintiff also “wrote a letter requesting to talk with Internal Affairs.” [Id.] Plaintiff was transferred on May 26, 2011, [id. at 1], and she received a response to her grievance or letter “2.5 weeks after [the] transfer.” [Id. at 3.] Plaintiff states that “Warden Seabolt did not even sign [and] acknowledge [the] grievance” until May 27, 2011, the day after Plaintiff’s transfer. [Id.] Plaintiff asserts that “[t]here is no other reason for Plaintiff’s transfer; she is not a disciplinary problem.” [Id.]

Plaintiff claims that she suffered “physical and mental injury” because of the transfer. [Id. at 2.] The transfer prevented her from keeping her first appointment for physical therapy that was available only at Arrendale. [Id.] Plaintiff alleges that Pulaski did not provide comparable treatment. [Id. at 3-4.] Plaintiff claims that the

transfer was “demeaning” and psychologically damaging and “caused anxiety and further aggravated [her] eating disorder.” [Id. at 2-3.] Plaintiff seeks monetary, equitable, and injunctive relief. [Id. at 4-5.]

“Prison officials may not retaliate against inmates for filing lawsuits or administrative grievances. . . . While an inmate does not have a constitutionally protected liberty interest against being transferred to a less agreeable prison . . . prison officials may not transfer an inmate in retaliation for exercising [her] right to file grievances against prison officials. . . . Such retaliatory transfers violate an inmate’s First Amendment rights.” *Williams v. Brown*, 347 Fed. Appx. 429, 435 (11<sup>th</sup> Cir. Sept. 10, 2009) (per curiam) (citations omitted). “To state a retaliation claim . . . a plaintiff must establish first, that [her] speech or act was constitutionally protected; second, that the defendant’s retaliatory conduct adversely affected the protected speech; and third, that there is a causal connection between the retaliatory actions and the adverse effect on speech.” *Douglas v. Yates*, 535 F.3d 1316, 1321 (11<sup>th</sup> Cir. 2008) (quoting *Bennett v. Hendrix*, 423 F.3d 1247, 1250 (11<sup>th</sup> Cir. 2005)).

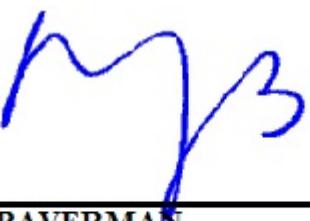
In this case, Plaintiff fails to allege facts suggesting that Seabolt transferred Plaintiff because of the grievance. Plaintiff’s sole allegation regarding Seabolt is that she “sign[ed]” and “acknowledge[d]” the grievance on May 27, 2011, the day after

Plaintiff's transfer. [Doc. 13 at 3.] A copy of the grievance attached to the amended complaint shows that "5/27/11" was written as the "Warden Received Date." [Id. at 10.] Plaintiff does not allege that Seabolt knew about the grievance before the transfer. Plaintiff alleges that she submitted the grievance to "Ms. Jones," who is a counselor,<sup>1</sup> and also wrote a letter to an unspecified person. [Id. at 3.] Although Plaintiff asserts that "no other reason" but retaliation could explain the transfer, that assertion is speculative. [Id.] Because Plaintiff has failed in her second opportunity to state a viable claim against Seabolt, this action should be dismissed.

### **III. Conclusion**

For the reasons stated above, **IT IS RECOMMENDED** that this action be **DISMISSED** for failure to state a claim. The Clerk is **DIRECTED** to terminate the reference to the undersigned.

**IT IS SO RECOMMENDED and DIRECTED,** this 20th day of May, 2013.




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**ALAN J. BAVERMAN**  
**UNITED STATES MAGISTRATE JUDGE**

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<sup>1</sup> The Court previously dismissed Plaintiff's claims against Counselor Jones. [See Doc. 12 at 6; Doc. 9 at 13-15.] In her amended complaint, Plaintiff does not claim that Jones was responsible for the transfer, and Plaintiff does not allege any facts suggesting that Jones was responsible.